IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MALIBU MEDIA, LLC. *

Plaintiff, *

v. * Case No. 3:15-cv-06652-MLC-TJB

JEFFREY CLABURN, *

Defendant *

* * * * * * * * * * * * *

MOTION OF EXTENSION OF TIME TO ANSWER OR RESPOND

Defendant Jeffrey Claburn respectfully moves to extend his time to answer or otherwise respond to the Complaint by sixty (60) days from the date of this Motion, such answer or response to be on or before May 21, 2016, in light of the circumstances set forth below.

In the alternative, Defendant moves for an extension for such lesser period of days as the Court shall deem more appropriate--for example, forty-five (45) or thirty (30) days--in light of the circumstances set forth below.

Defendant respectfully requests the patience of the Court and opposing counsel, as he is representing himself pro se.

BACKGROUND

1. Defendant received service of legal process at his home after 5:00 pm on February 16, 2016.

2. Prior to that date, Defendant was unaware of this action or its potential, or of any basis for such an action against him.

3. Defendant believes he may have failed to read and attend to a prior notice of this impending action sent to him by regular mail due to the fact that during substantial portions of December 2015 and January 2016 he was relying on two other individuals to retrieve his mail using the two keys to his neighborhood mailbox, but unbeknownst to him, his mail was being withheld by the post office due to an accumulation of too much mail while he was away with his family for Christmas vacation.

4. On March 7, 2016, Defendant filed with the Clerk for an automatic 14-day extension of the time to respond from March 8 to March 22.

5. On March 21, Defendant contacted legal counsel for the Plaintiff requesting his consent to a further extension in order to allow for discussion(s) regarding potential settlement of this case and especially on account of his medical circumstances, which he asked Plaintiff's counsel to discuss with him telephonically, and other circumstances, as explained more fully in a five-page letter delivered electronically.

6. On March 22, Plaintiff's counsel notified Defendant electronically at 4:31 pm that he would not consent to an extension, and that he also would not agree to set any telephonic conversation(s) to discuss the case and potential settlement, or Plaintiff's medical circumstances, although he would entertain unilateral written offers of settlement by the Defendant.

Defendant's Medical and Other Personal Circumstances Warranting an Extension

7. Due to financial and other constraints, **Defendant is forced to represent himself *pro se* at least initially in this lawsuit**, and although he has considerable familiarity with legal principles and legal argument, he has no experience with civil procedure and many related matters; he has, for example, spent many hours on or about ten different occasions trying to set-up and use PACER to access the documents in this case, but been unable to do so as

recently as this morning--he believes he has encountered conflict with a prior account he used briefly about 15-years ago; substantial delays in activating his account after he registered; PACER's failure to work with the specific web browser he was using; PACER not being compatible with security software on his computer preventing it from setting general cookies; the system locking him out repeatedly for failed login attempts, each time requiring a password reset; as well as other problems he has not yet diagnosed; etc.

8. **Defendant has a serious medical condition which has delayed and hampered his ability to respond.**

9. Defendant's physician, Robert Rosenthal, 110 Straube Center Blvd., Suite I-1C Pennington, NJ 08534-1462, 609-737-7676, has agreed to speak directly to Her Honor or a Clerk acting at her request telephonically regarding Defendant's condition, and he has also prepared a letter to the court regarding same.

10. Defendant seeks the Court's guidance as to how this information may be confidentially conveyed as a procedural matter for purposes of an extension of time to respond, and if Her Honor should request, to learn and comply with the proper procedure for filing his physician's letter on a sealed and confidential basis.

11. **Defendant is a primary caretaker for two four-year-old boys, most of the time on his own**: he takes care of his own son all day long approximately one-third (⅓) of the time, including the days leading up to this motion and while this motion is being prepared by him; and he takes care of his wife's son while she is at work and commuting for about five hours every weekday, including most holidays (but going forward, only four of five weekdays per week).

12. **On February 16, when Defendant first learned of this lawsuit with 21-days to respond, he did not have an operable personal computer or tablet computer**, his two prior

PC's having failed in prior years but not yet replaced, and being financially constrained by costs associated with his wedding last year and his two boys.

13. Not having a PC or tablet computer significantly interfered with his ability to understand and investigate this lawsuit and Plaintiff's claims, as well as to research and prepare legal defenses, both procedurally and substantively.

14. On or about March 17 he purchased a personal computer and on or about March 18 he put it into service, which he has used to prepare this motion while taking care of his son, but he requires additional computer time to fully research all his defenses--particularly his affirmative defenses--and his counterclaims against the Plaintiff.

Legal Reasons Warranting Additional Time to Respond

15. This is not a "normal" lawsuit where Defendant had any reason to know or even suspect that he might be involved in litigation prior to this action; frankly, it is more akin to being shaken down for money in the subway or, while stopped at a traffic light, having someone approach your car demanding money for some vague asserted pretext--it is certainly clear from publically available information that Plaintiff "is in the business" of suing people (described as "a veritable orgy of lawsuits … filed in this this Court [The Federal District of New Jersey]" alone by Magistrate Judge Bongiovanni) and is notorious for bringing suit against implausible defendants such as elderly individuals with poor vision and no computer for allegedly downloading and viewing their copyrighted materials.

16. The Plaintiff's complaint, although essentially devoid of any facts regarding Defendant other than that he allegedly paid a Verizon Fios triple-play bill for cable, phone, and internet service for his household over a six-month period in 2015, makes **highly technical computer and internet claims on one hand and highly technical legal copyright claims on the other**

hand; both sides of this require considerable time to even understand, let alone respond to legally.

17. Defendant believes that **appropriate defenses in this case could include many affirmative defenses, some extremely technical and specific to copyright law, others uniquely applicable based on apparent facts regarding this specific Plaintiff,** including but not limited to unclean hands, estoppel, failure to mitigate, implied consent to use, fair use, etc.--and although the Federal Rules of Civil Procedure are based on a theory of notice pleading--Defendant is trying to prepare an actual substantive response rather than a list of every possible affirmative defense that must be invoked in an answer so as to not be waived.

18. Defendant is also actively preparing **a motion to dismiss** based on the Video Privacy Protection Act of 1988, and believes that **application of the Video Privacy Protection Act of 1988, 18 USC § 2710, in response to claimed copyright infringement by this Plaintiff this may be an issue of first impression for this Court, and may have great relevance to many other legal proceedings as well**--and so Plaintiff requests additional time for legal research in order to prepare a thorough brief on this complex issue.

19. While this motion is not a legal brief, in brief, the Video Privacy Protection Act of 1988 was passed on a bipartisan basis, including leadership from Democratic Senator Leahy of New Hampshire, and signed into law by President Reagan, as a direct response to certain events related to the nomination hearings for Judge Robert Bork to the United States Supreme Court.

20. The Washington Post obtained and published alleged "records" of videos rented by Judge Bork with apparently pornographic or embarrassing titles; Defendant actively remembers this story from his childhood nearly 30 years later.

21. Congress responded with the Video Privacy Act by placing a variety of restrictions, some primarily intended to apply to video providers, such as a video rental stores, and others primarily

intended to apply to third parties who have obtained such information, such as newspaper reporters, private investigators, and private litigants.

22. In Plaintiff's complaint, Plaintiff has plead that BitTorrent is a "file sharing system[] used for distributing large amount of data, including ... digital movie files," essentially conceding that BitTorrent is an "audio-visual" "service provider" within the meaning of section (a)(4) of the Act, yet has failed to comply with any of the highly specific requirements of the Privacy Act.

23. **With regard to this lawsuit, section (d) of the Video Protection Privacy Act provides "Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State."**

24. Defendant believes he has a significant number of legally cognizable counterclaims against Plaintiff, including but potentially not limited to: claims under the Racketeer Influenced and Corrupt Organizations Act (RICO); claims under New Jersey Law prohibiting Invasion of Privacy, Intrusion Into Seclusion; and claims under New Jersey Law prohibiting the Intentional Infliction of Severe Emotional Distress by outrageous conduct in violation of New Jersey community standards--and he requires additional time to research such claims and the procedures related thereto so as to plead them properly in his answer.

25. Defendant believes a memorandum of law in support of this motion is unnecessary, the Court being aware of the rules, guidelines, and considerations relevant to Extensions of Time to Answer, and as a legal opinion is not necessary in response to this motion; however, Defendant will provide one if requested by the Court.

WHEREFORE, Defendant requests that the Court Grant this Motion for Extension of Time to Answer or Respond and enter the attached form of Order.

March 22, 2016

Jeffrey Claburn, pro se
140 Coburn Rd.
Pennington, NJ 08534
(609) 737-4412
jclaburn@gmail.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MALIBU MEDIA, LLC.	*	
Plaintiff,	*	
v.	*	Case No. 3:15-cv-06652-MLC-TJB
JEFFREY CLABURN,	*	
Defendant	*	

* * * * * * * * * * * * *

ORDER

Upon Consideration of Defendant's Motion for Extension of Time to Answer or Respond, it is this _____ day of _________________, 2016:

ORDERED that Defendant's Motion for Extension of Time to Answer or Respond be GRANTED. Defendant's answer or other response to the Complaint shall be filed on or before May 21, 2016.

[or   , 2016].

____

United States District Judge

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this 22nd day of March, 2016, a true and correct copy of the foregoing was transmitted to counsel of record for Plaintiff via regular mail and also by electronic mail, excepting the [COVER PAGE] with Defendant's contact information.

Jeffrey Claburn

[COVER PAGE]

March 22, 2016

Courtesy Copy for Her Honor

Jeffrey Claburn
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Pennington NJ 08534
Phone or Fax: (609) 737-4412
Cell: (609) 474-0077
jclaburn@gmail.com
Pro se

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